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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,701	03/29/2005	David R. Wardwell	96764	2061
22342 7590 12/16/2009 FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
CHANKONG, DOHIM				
ART UNIT		PAPER NUMBER		
2452				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,701

Applicant(s)

WARDWELL, DAVID R.

Examiner

DOHM CHANKONG

Art Unit

2452

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

This non-final rejection is in response to Applicant's request for continued examination which was filed on 9/30/2009. Claims 1, 3-5, 7-9, 11, and 12 are amended. Accordingly, claims 1-12 are presented for further examination.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/30/2009 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the *Manner* in which the invention was made.

I. CLAIMS 1-12 ARE REJECTED UNDER 35 U.S.C §103(A) AS BEING UNPATENTABLE OVER *MANN* ET AL, U.S PATENT NO. 6,957,281 [“*MANN*”], IN VIEW OF *TURNER* ET AL, U.S. PATENT NO. 6,907,041 [“*TURNER*”].

All citations in the following claim mapping are to *Mann* unless otherwise noted.

Claim 1

As to claim 1, *Mann* as modified by *Turner* discloses a method for collating data in a distributed computer network having non-synchronous compute nodes, said method comprising:

receiving a plurality of sets of data packets from a plurality of non-synchronous compute nodes physically separated from each other, wherein each of said set of data packets is provided by one of said non-synchronous compute nodes [Figure 1 «item 210» | column 1 «lines 45-60» | column 4 «lines 52-60» where : *Mann* discloses receiving packets of different sessions at the controller, each session representing communications with a different network node] and wherein each of the plurality of non-synchronous compute nodes comprises a source of data packets [column 1 «lines 45-48»: plurality of network nodes accessing a network resource send data packets];

inserting said data packets into a software container according to predetermined rules for determining a logical order for said data packets [column 3 «lines 6-9 and 41-48» | column 4 «lines 30-51» | column 5 «lines 18-28» where : *Mann*’s queue is analogous to the claimed software container];

locating common groups of said data packets within said software container according to said predetermined rules [column 3 «lines 41-48» where : *Mann* discloses grouping packets based on common session numbers];

protecting said software container against incomplete groups of said data packets according to a grouping criteria [column 5 «lines 18-28» | column 6 «lines 39-46» where : *Mann* discloses using sequence numbers to order the packets. Sequence numbers are well known in the art to help determine whether there are missing packets within the sequence of packets of a session]; and

outputting of said data packets in respective logical groups that represent an aggregate packet from at least two of the non-synchronous compute nodes after said grouping criteria has been met [column 3 «line 49» to column 4 «line 18» | *Turner*, column 5 «lines 9-26» where : *Turner* discloses merging packets based on *timestamp* which means that the merged packet contains packets from more than two of the nodes].

It would have been obvious to one of ordinary skill in the art to have modified *Mann*'s system to include *Turner*'s timestamp grouping functionality. *Mann* discloses that his system utilizes classification criterion to classify (i.e., group) received packets. *Turner* discloses using a packet's timestamp as a classification criterion and utilizing this criterion results in an aggregate packet from at least two of the nodes because the system looks at a packet's timestamps and not session numbers. Such a modification would have improved *Mann*'s system because it would allow grouping packets based on time order (i.e., merging of streams of time stamps) [*Turner*, column 5 «lines 24-26].

Claims 2, 6, and 10

Mann does disclose inserting data packets into said software container but does not expressly disclose performing said insertion according to individual packet time reference. In the same field of invention, *Turner* is directed towards a communications network for resequencing

packets using a packet time reference, aka a timestamp [column 3 «lines 31-47»]. *Turner* expressly discloses inserting said data packets into a software container according to individual packet time reference [column 4 «line 65» to column 5 «line 7»].

It would have been obvious to one of ordinary skill in the art to incorporate timestamps into *Mann*'s insertion functionality. Use of timestamps enables the ability to better resequence packets into the correct order and to insure that they are transmitted in the correct order to the next destination in the network.

As to claims 6 and 10, they merely are directed towards an apparatus and computer program product on a medium, that implement the steps of the method of claim 2. Therefore, claims 6 and 10 are rejected for at least the same reasons set forth for claim 2.

Claims 3, 7, and 11

Mann does disclose locating common groups of data packets within said software container, but does not disclose doing so based on individual packet time reference. *Turner* discloses locating common groups based on individual packet time reference [column 4 «lines 56-59» | column 5 «lines 9-26»] where : *Turner*'s merging of different groups based on their time stamps is analogous to the claimed functionality].

It would have been obvious to one of ordinary skill in the art to have modified *Mann* to include the function of grouping packets based on packet time reference. *Turner* discloses that the ability to group based on time stamps benefits a system by enabling resequencing of a multiplicity of packets into a sorted order [column 4 «lines 56-59» | column 5 «lines 14-18»].

As to claims 7 and 11, they merely are directed towards an apparatus and computer program product on a medium, that implement the steps of the method of claim 3. Therefore, claims 7 and 11 are rejected for at least the same reasons set forth for claim 3.

Claims 4, 8, and 12

Mann discloses outputting logical group of said data packets in respective logical groups that represent time-synchronous packets from said non-synchronous compute nodes after said grouping criteria has been met [column 4 «lines 1-17 and 52-60» | column 5 «lines 18-28» | column 6 «lines 39-46» where : *Mann* discloses outputting a bundle of packets based on the packet's session number and sequence number within that particular session. *Mann*'s packets are therefore synchronous based on their sequence and session numbers].

As to claims 8 and 12, they merely are directed towards an apparatus and computer program product on a medium, that implement the steps of the method of claim 4. Therefore, claims 8 and 12 are rejected for at least the same reasons set forth for claim 4.

Claims 5 and 9

As to claims 5 and 9, they merely are directed towards an apparatus and computer program product on a medium, respectively, that implement the steps of the method of claim 1. Therefore, claims 5 and 9 are rejected for at least the same reasons set forth for claim 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOHM CHANKONG whose telephone number is (571)272-3942. The examiner can normally be reached on Monday to Friday [10 am - 6 pm].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on (571)272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DOHM CHANKONG/
Primary Examiner, Art Unit 2452